

Home > Businesses > Help & Resources > Legal Library > Directives > Directives - By Decade > (1980-1989) Directives >

Directive 86-33: Security Corporations: Classification; Returns

FACTS: Acme Corporation is a domestic corporation that is not a regulated investment company or bank holding company under the Federal Internal Revenue Code. Baker Corporation is a domestic corporation that is a regulated investment company.

It is assumed that throughout their current taxable year, and at all other relevant times, both Acme and Baker are "engaged exclusively in buying, selling, dealing in, or holding securities on [their] own behalf and not as . . . brokers[s]," within the meaning of that phrase in G.L. c. 63, § 38B.

ISSUE: What procedures must Acme and Baker follow in order to be classified as security corporations?

DISCUSSION: Any domestic business or foreign corporation is entitled to tax treatment as a security corporation, provided that it satisfies two requirements. First, the corporation must be engaged exclusively in buying, selling, dealing in, or holding securities on its own behalf and not as a broker. Second, the corporation must be classified as a security corporation by the Commissioner. G.L. c. 63, § 38B.

In order to apply for classification as a security corporation, a corporation must submit the following information to the Commissioner:

- 1) The name, address and Federal Identification Number of the corporation;
- 2) The taxable year for which classification is sought;
- 3) A balance sheet as of the first day of the taxable year;
- 4) A balance sheet as of the date of application (or as near as possible);
- 5) An income statement for the period from the first day of the taxable year to the date of application;
- 6) A statement that the income of the corporation for the remaining portion of the taxable year will be derived exclusively from buying, selling, dealing in or holding securities on its own behalf and not as a broker;
- 7) A statement that the corporation has (or has not) qualified as a regulated investment company or a bank holding company under the applicable sections of the Federal Internal Revenue Code; and
- 8) The name and telephone number of the officer or representative who is to be contacted in case additional information is needed.

This application must be received by the Commissioner before the end of the taxable year for which the corporation is seeking classification. G.L. c. 63, § 38B.

Any general balance sheet accounts, such as "investments", "Accounts Receivable" or "Marketable Securities", must be accompanied by a detailed schedule listing the types of assets held by the corporation. The Commissioner may require additional information if necessary to determine eligibility.

Once a corporation has been classified as a security corporation, it is not required to seek classification again unless it has been notified by the Commissioner that its classification has been

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revoked. A corporation that has been so classified must, however, notify the Commissioner of any change in its activities before the end of the taxable year in which the change occurs. Moreover, if a corporation has been engaged in other activities during an open taxable year, the Commissioner may retroactively assess any additional amounts due under the corporate excise for that year, notwithstanding the corporation's classification. G.L. c. 62C, §§24-26; DOR-D 86-37. A finding that the corporation has been engaged in activities not permitted under section 38B may also constitute grounds for the revocation of the corporation's classification. See generally *John S. Lane & Sons, Inc. v. Commissioner of Revenue*, 396 Mass. 137 (1985); DOR-D 86-37.

Applications should be sent to the following address:

Massachusetts Department of Revenue
Determination Bureau
Attn: Security Corporations Unit P.O. Box 7027
Boston, Massachusetts 02204

DIRECTIVE: In order to apply for security corporation classification, Acme and Baker must each submit to the Commissioner, in the manner described above, the following information: balance sheets as of the first day of the taxable year and as of the date of the application for classification; a statement of income beginning with the first day of the taxable year and ending with the date of application; a statement that the income of the corporation for the remainder of the taxable year will be derived exclusively from buying, selling, dealing in or holding securities on its own behalf; and a statement that it has (or has not) qualified as a regulated investment company or bank holding company.

Part Two: Returns

FACTS: The corporations are the same as those in Part One. Acme, which is not a regulated investment company or bank holding company, has been classified as a security corporation pursuant to G.L. c. 63, § 38B(a). Baker, which is a regulated investment company, has been classified as a security corporation pursuant to G.L. c. 63, § 38B(b).

ISSUE: What procedures must Acme and Baker follow once they are classified as security corporations in order to file their tax returns and pay the taxes due?

DISCUSSION: Any domestic business or foreign corporation that has been classified as a security corporation must file a tax return on Form 355A or 355B, whichever is applicable, except that Schedules B, C, D, E-1, E-2 and E need not be completed. An exact and complete copy of the corporation's Federal Income Tax Return must also be submitted as filed, without any changes or amendments.

A security corporation that is a regulated investment company or bank holding company must pay, on account of each taxable year, an excise equal to .33% of its gross income, as defined in G.L. c. 63, § 30(5)(a), or \$228, whichever is greater. G.L. c. 63, § 38B(b). A security corporation that is not a regulated investment company or bank holding company must pay, on account of each taxable year, an excise equal to 1.32% of its gross income, as defined in G.L. c. 63, § 30(5)(a), or \$228, whichever is greater. G.L. c. 63, § 38B(a). A security corporation may not allocate or apportion its gross income in any way.

Tax returns and payments are due on or before the fifteenth day of the third month following the close of a corporation's taxable year. G.L. c. 62C, § 11, 32. A security corporation may not be included in a combined return with any other corporation pursuant to G.L. c. 63, § 32B. Security corporations are also subject to the rules governing the declaration of estimated tax by corporations. G.L. c. 63B.

DIRECTIVE: Acme Corporation must file a Form 355A on or before the fifteenth day of the third month following the close of its taxable year, accompanied by an exact and complete copy of its Federal Form 1120. It must pay an excise equal to 1.32% of its gross income, as defined in G.L. c. 63, § 30(5)(a), or \$228, whichever is greater.

Baker Corporation must file a Form 355A on or before the fifteenth day of the third month following the close of its taxable year, accompanied by an exact and complete copy of its Federal Form 1120. It must pay an excise equal to .33% of its gross income, as defined in G.L. c. 63, § 30(5)(a), or \$228, whichever is greater.

REFERENCE: G.L. c. 63, §§ 30(5)(A), 38B; G.L. c. 62C, §§ 11, 24, 26, 32.

31 December 1986

/s/Ira A. Jackson
Ira A. Jackson

Commissioner of Revenue

AMENDED: DOR Directive 86-33 is hereby amended to require that for tax years beginning on or after January 1, 1988, security corporations file Form 355SC, "Domestic or Foreign Security Corporation Return," instead of Form 355A or B.

15 June 1989 /s/Stephen W. Kidder
Stephen W. Kidder
Commissioner of Revenue

This Directive represents the official position of the Department of Revenue on the application of the law to the facts as stated. The Department and its personnel will follow this Directive, and taxpayers may rely upon it, unless it is revoked or modified pursuant to 830 C.M.R. § 62C.01(5)(e). In applying this Directive, however, the effect of subsequent legislation, regulations, court decisions, Directives, and TIRs must be considered, and Department personnel and taxpayers may rely upon this Directive only if the facts, circumstances and issues presented in other cases are substantially the same as those set forth in this Directive.

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